



24 CFR part 203

[Docket No. FR-6263-P-01]

RIN: 2502-AJ59

Increased Forty-Year Term for Loan Modifications

AGENCY: Office of Housing, HUD.

ACTION: Proposed Rule.

SUMMARY: HUD's current regulations allow mortgagees to modify a Federal Housing Administration (FHA) insured mortgage by recasting the total unpaid loan for a term limited to 360 months to cure a borrower's default. This proposed rule would amend HUD's current regulation to allow for mortgagees to recast the total unpaid loan for a new term limit of 480 months. Increasing the maximum term limit to 480 months would allow mortgagees to further reduce the borrower's monthly payment as the outstanding balance would be spread over a longer time frame, providing more borrowers with FHA-insured mortgages the ability to retain their homes after default. This change would also align FHA with modifications available to borrowers with mortgages backed by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), which both currently provide a 40-year loan modification option.

DATES: Comment Due Date: **[Insert date 60 days after date of publication in the FEDERAL REGISTER].**

ADDRESSES: HUD invites interested persons to submit comments to the Office of the General Counsel, Regulations Division, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. Communications should refer to the above docket number and title and should contain the information specified in the "Request for Comments" section. There are two methods for submitting public comments.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at all federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt, HUD recommends that comments be mailed at least two weeks in advance of the public comment deadline.

2. Electronic Submission of Comments. Comments may also be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted using one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Comments. All comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at HUD Headquarters, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055. This is not a toll-free number. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Elissa Saunders, Department of Housing and Urban Development, 451 7th Street SW, Suite 9278, Washington DC 20410-4000; telephone

number 202-708-2121 (this is not a toll-free number). Persons with hearing or speech impairments may contact the numbers above via TTY by calling the Relay Service at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Housing Administration (FHA) was established by Congress in 1934 to improve nationwide housing standards, to provide employment and stimulate industry, to improve conditions with respect to home mortgage financing, to prevent speculative excesses in new mortgage investment, and to eliminate the necessity for costly second mortgage financing.¹ HUD's regulations for Title II FHA single family forward mortgage insurance are codified in 24 CFR part 203. These regulations address mortgagee eligibility requirements and underwriting procedures, contract rights and obligations, and the mortgagee's servicing obligations. These regulations also address a mortgagee's obligations to offer loss mitigation options when a mortgagor defaults on a loan, as provided in 24 CFR 203.501.

Mortgagees are required to consider utilizing deeds in lieu of foreclosure, pre-foreclosure sales, partial claims, assumptions, special forbearance, and recasting of mortgages.² In 1996, the Balanced Budget Downpayment Act, I (Pub. L. 104-99, approved January 26, 1996) amended sections 204 and 230 of the National Housing Act to provide that HUD may pay insurance benefits to a mortgagee to recompense the mortgagee for its actions to provide an alternative to the foreclosure of a mortgage that is in default. These actions may include special forbearance, loan modification, and/or deeds in lieu of foreclosure, all upon terms and conditions as the mortgagee shall determine in the mortgagee's sole discretion, within guidelines provided by HUD.³ In response, HUD promulgated an interim final rule (61 FR 35014, July 3, 1996), followed by a final rule (62 FR 60124, November 6, 1997) adding loss mitigation options to 24

¹ 12 U.S.C. 1701 *et seq.*

² 24 CFR 203.501.

³ 12 U.S.C. 1715u.

CFR part 203. One of these options allows mortgagees to modify a mortgage for the purpose of changing the amortization provisions and recasting the total unpaid amount due for a term not exceeding 360 months from the date of the modification.⁴

II. This Proposed Rule

HUD proposes to amend 24 CFR 203.616, which allows a mortgagee to modify a mortgage for the purpose of changing the amortization provisions by recasting the total unpaid amount due for a new term, by replacing the current maximum of 360 months with a new maximum of 480 months.

Allowing mortgagees to provide a 40-year loan modification would support HUD's mission of fostering homeownership by assisting more borrowers with retaining their homes after a default episode while mitigating losses to FHA's Mutual Mortgage Insurance (MMI) Fund. HUD believes there are situations in which a mortgagee seeks to engage in loss mitigation but is unable to provide loss mitigation to a degree sufficient to prevent default. In such cases, an additional 120 months on the length of the recast mortgage would allow for a lower, more sustainable monthly payment.

Many borrowers who have become delinquent would have difficulty making payments at the monthly rate of their mortgage before default. Therefore, a lower monthly payment is a key element to bring the mortgage current, prevent imminent re-default, and ultimately retain their home and continue to build wealth through homeownership. HUD anticipates that a 40-year loan modification as part of loss mitigation could decrease a borrower's monthly principal and interest payment by a meaningful amount sufficient to prevent several thousand borrowers a year from foreclosure by increasing a borrower's ability to afford the modified payment. Given the large number of FHA-insured mortgages that have been originated or refinanced in the past few years in a historically low interest rate environment, simply extending out the term of a mortgage

⁴ 24 CFR 203.616.

in default for another 30 years at a similar interest rate would not provide a substantial reduction to a borrower's monthly mortgage payment.

Additionally, borrowers impacted by the COVID-19 pandemic, including those who may re-default in the future after having received a loss mitigation option under COVID-19 policies, may need a 40-year loan modification to obtain affordable monthly payments that would allow them to stay in their homes. This would also reduce losses to the MMI Fund as fewer properties would be sold at a loss in foreclosure or out of FHA's real estate-owned (REO) inventory.⁵

All else held equal, borrowers who choose a 40-year loan modification would be subject to slower equity accumulation and additional interest payments over the course of the modified mortgage relative to a 30-year loan modification. However, to the extent a 40-year modification helps borrowers avoid foreclosure, the slower equity accumulation and additional interest would be greatly outweighed by the benefits of being able to retain their homes. Moreover, a borrower is not obligated to carry the loan for 40 years. FHA data indicates that the average life of a 30-year FHA-insured mortgage is approximately seven years, although it is possible that prepayment behavior could be different with a longer-term loan.

The 40-year mortgage remains rare but has become more commonly recognized in the mortgage industry. The Government Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac, both allow for 40-year mortgage loan modifications.⁶ The National Credit Union Association also allows for 40-year mortgages and a federal credit union may set the maturity date for modified or refinanced mortgages beyond the regulatory 40-year maturity limit as long as the terms of the original loan were no more than 40 years. The U.S. Department of Agriculture

⁵ It is also worth noting that, per its recent press release, Ginnie Mae is now permitting the pooling of 40-year mortgages for the purposes of providing FHA loan modifications with lower payments to help keep borrowers in their homes. Ginnie Mae's mortgage-backed securities include the requirement that loans must be 90 or more days delinquent or have successfully completed a trial payment plan before they can be bought out of a Ginnie Mae pool.

⁶ See D2-3.2-07: Fannie Mae Flex Modification (09/09/2020), available at: <https://servicing-guide.fanniemae.com/THE-SERVICING-GUIDE/Part-D-Providing-Solutions-to-a-Borrower/Subpart-D2-Assisting-a-Borrower-Who-is-Facing-Default-or/Chapter-D2-3-Fannie-Mae-s-Home-Retention-and-Liquidation/Section-D2-3-2-Home-Retention-Workout-Options/D2-3-2-07-Fannie-Mae-Flex-Modification/1042575201/D2-3-2-07-Fannie-Mae-Flex-Modification-09-09-2020.htm>; Freddie Mac Flex Modification Reference Guide, March 2021, available at: https://sf.freddiemac.com/content/_assets/resources/pdf/other/flex_mod_ref_guide.pdf.

allows for loan modification up to 40 years where certain conditions are met above the requirements for a 30-year loan modification.⁷ By allowing 40-year loan modifications, HUD would align with the GSEs, NCUA, and USDA and ensure that FHA borrowers receive comparable opportunities for home retention.

III. Findings and Certifications

Regulatory Review – Executive Orders 12866 and 13563

Pursuant to Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This proposed rule was determined to be a “significant regulatory action” because it is likely to have an annual effect on the economy of \$100 million or more. This proposed rule would increase available loss mitigation options for borrowers and enable more borrowers to avoid foreclosure and remain in their homes. HUD also anticipates that this would have a positive effect on the FHA MMI Fund by lowering defaults. The docket file is available for public inspection on <http://www.regulations.gov> and in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations

⁷ For more information, see 7 CFR 3555.304.

Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Relay Service at 800-877-8339 (this is a toll-free number).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The change of this proposed rule would be limited to requiring mortgagees to consider and, where appropriate, utilize an extended term limit. Mortgagees are already required to consider mortgage modification so this change should not have an economic impact on mortgagees. If there is an economic effect on mortgagees, it would fall equally on all mortgagees. Further, HUD anticipates that allowing an additional loss mitigation tool would have a net positive economic impact on mortgagees by decreasing the number of defaults and therefore the costs associated with those defaults.

Accordingly, the undersigned certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the proposed rule stage, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban

Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR part 203

Hawaiian Natives, Home improvement, Indians-lands, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, and Solar energy.

For the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 203 as follows:

PART 203 - SINGLE FAMILY MORTGAGE INSURANCE

1. The authority for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1707, 1709, 1710, 1715b, 1715z-16, 1715u, and 1715z-21; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

§ 203.616 [Amended]

2. Amend § 203.616 by removing the number “360” and adding in its place, the number “480”.

Lopa P. Kolluri,
Principal Deputy Assistant Secretary, Office
of Housing-Federal Housing Administration.

[Billing Code: 4210-67]

[FR Doc. 2022-06875 Filed: 3/31/2022 8:45 am; Publication Date: 4/1/2022]